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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2015-0096]

The Scotts Co. and Monsanto Co.; Determination of Nonregulated Status of Creeping Bentgrass Genetically Engineered For Resistance to Glyphosate

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our determination that creeping bentgrass designated as event ASR368, which has been genetically engineered for resistance to the herbicide glyphosate by the Scotts Company and Monsanto Company is no longer considered a regulated article under our regulations governing the introduction of certain genetically engineered organisms. Our determination is based on our evaluation of data submitted by the Scotts Company and Monsanto Company in its petition for a determination of nonregulated status, our analysis of publically available scientific data, and comments received from the public on the petition for nonregulated status and its associated environmental impact statement and plant pest risk assessment. This notice also announces the availability of our written determination and record of decision.

DATES: Effective [Insert date of publication in the Federal Register].

ADDRESSES: You may read the documents referenced in this notice and any comments we received in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room

hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799-7039 before coming. Those documents are also available on the Internet at http://www.aphis.usda.gov/biotechnology/petitions_table_pending.shtml under APHIS Petition Number 15-300-01p and are posted with the comments we received on the Regulations.gov Web site at <http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0096>. FOR FURTHER INFORMATION CONTACT: Dr. John Turner, Director, Environmental Risk Analysis Programs, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737-1236; (301) 851-3954, email: john.t.turner@aphis.usda.gov. To obtain copies of the documents referenced in this notice, contact Ms. Cindy Eck at (301) 851-3892, email: cynthia.a.eck@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

The regulations in 7 CFR part 340, “Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,” regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered (GE) organisms and products are considered “regulated articles.”

The regulations in § 340.6(a) provide that any person may submit a petition to APHIS seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

APHIS received a petition from the Scotts Company of Marysville, OH, and Monsanto Company of St. Louis, MO (Scotts/Monsanto), seeking a determination of nonregulated status of

creeping bentgrass (Agrostis stolonifera L.) designated as event ASR368, which has been genetically engineered for resistance to the herbicide glyphosate. The Scotts/Monsanto petition states that information collected during field trials and laboratory analyses indicates that ASR368 bentgrass is not likely to be a plant pest and therefore should not be a regulated article under APHIS' regulations in 7 CFR part 340.

In a notice¹ published in the Federal Register on January 8, 2016 (81 FR 902-903, Docket No. APHIS-2015-0096), APHIS announced the availability of the Scotts/Monsanto petition for public comment. APHIS solicited comments on the petition for 60 days ending on March 8, 2016. The notice also announced that APHIS would prepare either an environmental assessment or an environmental impact statement (EIS) in accordance with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq., NEPA) to provide the Agency with a review and analysis of any potential environmental impacts associated with the petition request.

Following review of public comments, we published another notice² in the Federal Register on August 3, 2016 (81 FR 51174-51176, Docket No. APHIS-2015-0096), advising the public of our intent to prepare an EIS for the potential determination of nonregulated status requested by the petition. APHIS decided to prepare an EIS in order to perform a comprehensive environmental analysis of the potential environmental impacts that may occur as a result of granting determinations of nonregulated status for this event.

¹ To view the notice, the petition, the comments we received, and other supporting documents, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0096>.

² To view the draft EIS, final EIS, supporting documents, and the comments we received, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0096>.

National Environmental Policy Act and Record of Decision

To provide the public with documentation of APHIS' review and analysis of the potential environmental impacts associated with a determination of nonregulated status of ASR368 bentgrass, an EIS has been prepared in accordance with: (1) NEPA, as amended (42 U.S.C. 4321 et seq.); (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500-1508); (3) USDA regulations implementing NEPA (7 CFR part 1b); and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

A notice of availability regarding the draft EIS prepared by APHIS was published by the Environmental Protection Agency (EPA) in the Federal Register on September 30, 2016 (81 FR 67348-67349, Docket No. ER-FRL-9029-3). Along with the draft EIS, APHIS also made available the plant pest risk assessment (PPRA) for the petition. APHIS reviewed and evaluated all of the public comments received on the draft EIS and prepared formal responses to them as part of the final EIS.

A notice of availability regarding the final EIS prepared by APHIS was published by EPA in the Federal Register on December 9, 2016 (81 FR 89095-89096, Docket No. ER-FRL-9030-6). The NEPA implementing regulations in 40 CFR 1506.10 require a minimum 30-day review period between the time the notice of availability of a final EIS is published and the time an agency makes a decision on an action covered by the EIS. APHIS has reviewed and evaluated the comments received during the 30-day review period and has concluded that it has fully and appropriately analyzed the relevant environmental issues covered by the final EIS and those comments. Based on our final EIS, the response to public comments, and other pertinent scientific data, APHIS has prepared a record of decision for the final EIS.

Determination of Nonregulated Status

Based on APHIS' analysis of field and laboratory data submitted by Scotts/Monsanto, references provided in the petitions, peer-reviewed publications, information analyzed in the EIS, the PPRA, comments provided by the public, and APHIS' evaluation of and response to those comments, APHIS has determined that is unlikely to pose a plant pest risk. Accordingly, the petition requesting a determination of nonregulated status is approved and ASR368 bentgrass is no longer subject to our regulations governing the introduction of certain genetically engineered organisms and to the plant pest provisions of the Plant Protection Act.

Copies of the signed determination document and the signed record of decision, as well as copies of the final EIS and the PPRA are available as indicated in the ADDRESSES and FOR FURTHER INFORMATION CONTACT sections of this notice.

Authority: 7 U.S.C. 7701-7772 and 7781-7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 12th day of January 2017.

Michael C. Gregoire,

Acting Administrator, Animal and Plant Health Inspection Service.

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